

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

WILLIAM ESCALERA,

Plaintiff,

**No. 08-cv-412
(GLS-GHL)**

v.

H. GRAHAM, *Superintendent, et al.*,

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

WILLIAM ESCALERA

Pro Se

04-A-1380

Auburn Correctional Facility

P.O. Box 618

Auburn, New York 13021

Gary L. Sharpe

U.S. District Judge

DECISION AND ORDER

The above-captioned matter comes to this court following a Supplemental Report-Recommendation ("R&R") by Magistrate Judge George H. Lowe, filed July 24, 2008. (Dkt. No. 12.)¹ The R&R

¹The Clerk is directed to append the R&R to this Decision and Order, and familiarity therewith is presumed.

recommended that *pro se* plaintiff William Escalera's Amended Complaint (Dkt. No. 11) be dismissed due to Escalera's: (1) failure to pay the filing fee of \$350; and (2) failure to allege facts plausibly suggesting that he is entitled to benefit from the exception to the "Three Strikes" Rule of 28 U.S.C. § 1915(g) for cases in which prisoners are in imminent danger of serious physical injury. Pending is Escalera's response to the R&R, which the court has construed, liberally, as an objection (the "Objection") to the R&R. (Dkt. No. 14.)

As the court has frequently observed, before entering final judgment, the court routinely reviews all report-recommendations in cases it has referred to a Magistrate Judge. See *Anderson v. Banks*, No. 06-cv-0625, 2008 WL 3285917, at *1 (N.D.N.Y. Aug. 7, 2008). If a party has objected to specific elements of the Magistrate Judge's findings and recommendations, the court reviews those findings and recommendations *de novo*. See *id.* In those cases where no party has filed an objection, or only a vague or general objection has been filed, the court reviews the findings and recommendations for clear error. See *id.*

Here, Escalera's Objection is at best general and vague, and at worst, incomprehensible. He complains that he has been subjected to a

“catch 22” in that he “had wished to withdraw his petition due to not being able to pay.” (Objection; Dkt. No. 14.) Additionally, he accuses the court and Judge Lowe of greed. (See *id.*) It is apparently Escalera’s view that the court is holding up his case in an effort to fleece him of \$350. In the alternative, he may be under the mistaken impression that he is required to pay the \$350 in spite of his desire to withdraw the case. Neither impression is accurate. Nor, for that matter, are Escalera’s arguments relevant to or responsive to the recommendations made by Judge Lowe. Accordingly, upon review of the R&R for clear error, the court adopts it in its entirety, and Escalera’s Amended Complaint is dismissed.

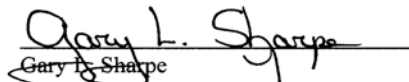
WHEREFORE, for the foregoing reasons, it is hereby

ORDERED that the Supplemental Report-Recommendation of Magistrate Judge George H. Lowe filed July 24, 2008 is adopted in its entirety and the Amended Complaint is dismissed; and it is further

ORDERED that the Clerk enter judgment and close the case.

IT IS SO ORDERED.

Albany, New York
Dated: September 5, 2008


Gary L. Sharpe
U.S. District Judge